

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO.17 OF 2002
WITH
COMPANY APPEAL NO.1 OF 2003

Mrs. Bakula Dinesh Gandhi and anr. Appellants.
Vs.

Premier Automobiles Ltd. and ors. Respondents.

Mr. V.R. Dhond i/by S.J.Khera for the Appellants.

Mr. Mahendra Rathod i/by U.M. Jhaveri for the
Respondent No.1.

Ms.Rajashree Rastogi i/by M.K. Ambalal for the
Respondent No.3.

CORAM : A.M. KHANWILKAR, J.
DATED : 14/7/2005

P.C.:

1. Preliminary objection is raised on behalf of the Respondent No.1 that the appellants before this court have no locus to institute the appeal under Section 10(F) of the Companies Act as they are not persons aggrieved within the meaning of that provision. In support of the argument that the appellants cannot be termed as aggrieved persons, reliance was placed by the counsel for the respondent No.1 on the Apex Court Judgment in the

case of **A.P. Gandhi Vs. H.M. Seervai** reported in **AIR 1971 S.C. 385.**

2. In my opinion, there is no substance in this submission. In the first place, it is not in dispute that the appellants participated in the proceeding before the Company Law Board. Indeed, the appellants were not named as party respondents before the Company Law Board, even then the appellants were allowed to participate in the said proceeding, which has terminated in the order, which is impugned in the present appeal. Besides, I find substance in the argument canvassed by the counsel for the appellants that if the order as passed by the Company Law Board was to be sustained, it would result in requiring the company to conduct Annual General Meeting which will be impermissible in law. In other words, although that order was passed by the Company Law Board against the company, the appellants being the share holders of the company are entitled to contest such order passed by the Company Law Board. So understood, in my opinion, the appellants will have to be treated as aggrieved persons within the provisions of Section 10(F) of the Act. The decision of the Apex Court pressed into service on behalf of the respondent No.1 is of

no avail. In fact, the observations in the said decision would support the argument of the appellants that they are entitled to prosecute the legal remedy in respect of wrongful directions given by the Company Law Board against the company of which they are the share holders. Accordingly, preliminary objection is rejected.

3. Heard counsel for the parties on merits of the appeal.

4. Relying on the decision of the Company Law Board, reported in **(2002) 47, CLA 17 in the case of National Dairy Development Board Vs. Indian Immunologicals Limited**, the only question agitated before this court is that, the subject application preferred before the Company Law Board, purportedly by one of the share holder of the company, was intended to shield the lapses of the management of the company. If it is so, contends learned counsel, the Company Law Board ought not to have obliged the company or management of the company by issuing directions as has been passed in the impugned order. In the first place, this reported decision cited before me will at least have persuasive value. In any case, there is no substance in the above

submission, in the fact situation of the present case.

5. The counsel for the appellants placed reliance on the pleadings filed before the Company Law Board particularly, Paragraph 7 at Page 20 to contend that such grievance was made before the Board. The grievance in the said pleadings however, is that, the objection was filed by the petitioner as share holder is misconceived and that the petition was filed at the behest of the directors of ALT. No specific grievance is made in the appeal memo as filed that such a contention was raised before the Company Law Board and not considered. From the impugned Judgment, it is not possible to discern that such a plea was specifically taken. My attention was drawn to Paragraph 12 at Page 287 wherein, it is suggested that the petitioners were holding 32% of shares in the company and therefore, were in control of the management of the company through its Managing Director Maitreya Doshi. Therefore, it was not open to file petition to justify their action. My attention is also drawn to ground N in the appeal memo. From the record, it is seen that the directors of the company at the relevant time were essentially nominees of the

applicant before the Company Law Board, who incidentally happened to be the share holder of the company. In addition, the other directors of the company were nominee of ICICI. I am informed by the counsel for the ICICI that nomination of ICICI was later on withdrawn and at present ICICI has no member on the Board of Directors. Be that as it may, there is marked difference between the status of management of the company and that of the shareholders. Incidentally, the nominees of the share holder were the directors of the company, but that does not mean that subject application was filed by the management as such. The subject application was however, filed by the share holder of the company.

6. In any case, the grievance of the appellants that such a course was adopted by the respondent No.1 so as to shield the illegal activities of its nominees who were members of the Board of Directors also does not commend to me. The Company Law Board in Paragraph 6 has rightly observed that, inspite of directions under Section 167 of the Companies Act, requiring the company to hold Annual General Body Meeting, action against the concerned defaulting officer for the illegalities committed by him, if

any, will remain open and will have to be pursued in its logical end. Understood thus, the argument that the Company Law Board ought not to have obliged the management by issuing directions under Section 167 of the Act as is argued before this court, to my mind, does not merit any interference.

7. I am also informed that during the pendency of this appeal, Annual General Meeting has already been held as was directed under the impugned order dated 4.12.2001 and consequential steps have been taken by the management in terms of the said decision. I am also informed that ICICI/Secured Creditors have filed suit against the company and have obtained injunction from the competent court against the company to forbear from enforcing the resolution passed in the Annual General Meeting appointing the nominees of the respondent No.1 as Directors. It is not necessary for me to enter into that controversy. Suffice it to observe that the appeal which takes exception to the order passed by the Company Law Board requiring the company to hold Annual General Meeting for the reasons recorded in the order, does not warrant interference. Hence, the appeal is dismissed.

COMPANY APPEAL NO.1 OF 2003

6. In view of the order passed in the companion appeal i.e. Appeal No.17 of 2002, for the same reasons this appeal also fails. Hence, dismissed.

(A.M. KHANWILKAR, J.)